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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/710,832 | 08/05/2004 | CHIH CHENG WANG | | 4831 |

43266 7590 06/14/2007
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| EXAMINER |
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NGUYEN, CAMTU TRAN

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| ART UNIT | PAPER NUMBER |
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3772

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| MAIL DATE | DELIVERY MODE |
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06/14/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/710,832

Applicant(s)

WANG, CHIH CHENG

Examiner

Camtu T. Nguyen

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

This Office Action is in response to applicant's amendment filed on July 21, 2006. No claim has been amended. Applicant's comments pertaining to the references applied in the previous Office Action, in particular, the Chaney reference, are acknowledged and deemed persuasive. The claims are rejected in the following manner in view of newly discovered prior art.

The declaration under 37 CFR 1.132 filed on July 21, 2006 has been carefully reviewed and acknowledged but deemed unpersuasive. Applicant's patient/customer surveys convey a successful rate of ED under different time length applied. For example, Mr. Chen's survey was treated with successful between/in 6 days, while Mr. Cheng's treatment was between/in 3 days, and Mr. Zou's treatment is still ongoing (from 2004). First of all, these three surveys represent only a small portion of the population, they can not be a long-felt need to be solved. There is no showing that others of the ordinary skill in the art were working on the problem, if so, for how long. In addition, there is no evidence that if persons skilled in the art who were presumably working on the problem knew of the teachings of the above cited references, they would have still unable to solve the problem. See MPEP 716.04.

Long-felt need is analyzed as of the date of the problem is identified and articulated, and there is evidence of efforts to solve that problem, not as of the date of the most pertinent prior art references. *Texas Instruments Inc. v. Int'l Trade Comm'n*, 988 F.2d 1165, 1179, 26 USPQ2d 1018, 1029 (Fed. Cir. 1993).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gavrilovich (U.S. Patent No. 3,773,040) in view of Boileau et al (U.S. Patent No. 5,377,691). Gavrilovich discloses in Figures 6-8 an elastic band (64) having the Velcro type attaching units at each end but on opposite sides of the flat portion. The Velcro type unit is indefinitely adjustable and the device is brought into the configuration shown in Figure 8 by merely wrapping it around the base of the organ and pressing the outermost end (72) upon the innermost end (74), whereby the Velcro hooks interlocks as indicated at (76). The Gavrilovich device lacks the markers, as recited. Boileau et al discloses a band-like structure (12) looping around the penis (14) and for the first and second configurations of the penis, with the first configuration in its flaccid situation and the second configuration indicating its erect condition (see abstract). Figures 5-7 illustrate the band-like structure (12) having fastening means via insert region (28a) and slot (19), the band-like structure (12) further comprising pluralities of gradations. Therefore, one of ordinary skill in the art would have modified the Gavrilovich's elastic band (64) to include markings or gradations, as taught by Boileau et al, on Gavrilovich's fastenings (66) as such would allow for marking during an erection phase. With regards to the elastic force, the Gavrilovich device is made from elastic band, therefore, would produce the same force as recited in claim 2. With regards to the band's dimension in claim 3 and the fastener's dimensions in claim 4, it would

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have been obvious to one of ordinary skill to consider as such would be suitable under the operating condition.

Generally, differences in concentration, temperature, size, or pressure will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration, temperature, size, or pressure is critical. “[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). See MPEP 2144.05 (II).

The Gavrilovich, as modified, would be capable of performing the method claims as recited.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Camtu T. Nguyen whose telephone number is 571-272-4799. The examiner can normally be reached on (M-F) 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Camtu Nguyen
June 11, 2007


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SUPERVISORY PATENT EXAMINER
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6/11/07